UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,441	01/23/2002	Vedvyas Shanbhogue	2207/13057	1964

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EXAMINER
FRANCIS, MARK P

ART UNIT	PAPER NUMBER
2124	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/052,441	SHANBHOGUE ET AL.
	Examiner	Art Unit
	Mark P. Francis	2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _23 January 2002_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-23_ is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-23_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _23 January 2002_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☐ All   b) ☐ Some * c) ☐ None of:

         1. ☐ Certified copies of the priority documents have been received.

         2. ☐ Certified copies of the priority documents have been received in Application No. _____.

         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _1/23/2002_.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter, which the applicant regards as his invention.

2. Claims 1,3,4,9,10,11,18, 20, and 21, are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention.

With respect to claims 1,9, and 18, state "translating messages originating at the

first software component from an upgraded version format to a current version format."

page 15, lines 6- 7, page 16, lines 16-17, and page 18, lines 10-11, respectively.

Applicant needs to specify which software component (first or second) of the current

version format will receive the translated messages.

With respect to claims 3,10,and 20, the phrase "first software component" on

page 15, line 11, page 17, line 1, page 18, line 15, respectively, render the claims

indefinite by failing to identify the version of first software component.

With respect to claim 4,11, and 21, the inventor states, "querying a version " on

page 15, line 14, page 11, line 5, page 19, line 2, this phrase renders the claims

indefinite, applicant needs to define the specific component version (updated or current)

that is being queried upon. Also, claims 4,11,21 do not specifically define how the

version querying process is performed on first and second components. Are both

components queried at the same time? Or separately

3. Claims 1,9, and 18 recite the limitation "current version format" on page 15,
line 7, page 16, line 17, page 18, line 11, respectively. Claims 1,9, and 18 identify "a
current version" however, the phrase "current version format" is not defined by the
claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter.

Claims 22 and 23 define software components only and not the platform or medium in

which they are run on, which is considered to be non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102

that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the
> United States before the invention thereof by the applicant for patent, or on an international application
> by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this
> title before the invention thereof by the applicant for patent.

To expedite a complete examination of the instant application the claims rejected

under 35 U.S.C. 101(nonstatutory) above are further rejected as set forth below in

anticipation of applicant amending these claims to place them within the four statutory

categories of invention.

6. Claims 1-3 & 5, 8-10 & 12,15-20, 22 & 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Fiske.

With respect to claims 1,9, and 18, Fiske teaches a method of upgrading a computer system having a first software component and a second software component, said first and second software components operating at a current version (See Col. 1, lines 59-63) said method comprising:

upgrading the first software component to an upgraded version (See Col 1,lines 59-61 and Col. 2, lines 25-29); and

validating the performance of the upgraded first software component, said validating comprising translating messages originating at the first software component

from an upgraded version format to a current version format. (See Col. 3, lines 54-62).

As previously stated above for claim 1, claims 9 and 18 are computer systems that incorporate the methods of claim 1.

With respect to claims 2 and 19, Fiske discloses the methods of claims 1 and 18, wherein said computer system comprises a first processor (See Fig1, element labeled Processor 1) executing the first software component and a second processor (See Fig. 1, element labeled Processor 2) executing the second software component.

With respect to claims 3, 10, and 20, Fiske teaches the method of claim 1,9, and 18, wherein the first software component comprises at least one interface (Col 3, lines 50-53), and said upgrading comprises upgrading the interface.

With respect to claims 5 and 12, Fiske teaches the method of claims 4,11 wherein the compatible version is the current version. (See Col 5, lines 6-14)

With respect to claims 8 and 15, Fiske teaches the method of claims 1 and 9,

further comprising upgrading the second software component to the upgraded version if

the validating is acceptable. (See Col 2, lines 24-30).

With respect to claim 16, Fiske discloses the computer system of claim 9,

wherein said first and second processors comprise a fault tolerant system. (See Col. 3,

lines 11-22).

With respect to claim 17, Fiske discloses the computer system of claim 9,wherein

said first and second processors comprise a multi-processor system. (See Col 3., lines

8&9)(See Fig 1, Processor1 and Processor2).

With respect to claims 22, Fiske discloses a software component adapted to be

used in a fault tolerant computer system, said component comprising:

An interface;(See Col 3, lines 50-52) and

A translation function;(See Col 3, line 55)

Wherein said translation function translates messages from said interface to a version

common to all other software components of the computer system. (See Col. 3, lines

54-62).

With respect to claim 23, Fiske discloses the software component of claim 22, wherein

said interface is upgraded.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 4, 11, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Apfel (5,974,454).

As set forth above in the rejection of 35 U.S.C. 102,

With respect to claims 4,11,and 21, Fiske shows a software upgrading method in accordance with claims 1, 9,and 18, respectively, but does not show querying a version of the first software component and the second software component; and determining a compatible version for the computer system.

Apfel teaches a method of querying a version of the first software component and the second software component; (See Col 2. lines 30-35 & Col 8,lines 54-66) And determining a compatible version for the computer system. (See Col 9, lines 32-38). Furthermore, Apfel method's allows the system to upgrade or install features that haven't been completely developed due to time constraints caused by schedule release dates. The software manufacture may know of a future date when the features will be completely developed thus creating a need for a system that can automatically check for an upgraded module feature on a predetermined basis.

Apfel shows a method of querying a version of the first software component and the second software component and determining a compatible version for the computer system in an analogous art for the purpose of automatically updating a software program module stored on a computer.

Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add a software component version-querying feature and a process for determining a compatible version to Fiske's invention to reduce consumer's manufacturing and shipping costs of materials due to the software manufacturer's changing or "slippage" of the upgraded features' release date(s). The modification would have been obvious because one of ordinary skill in the art would have been motivated to automatically upgrade software program modules while reducing manufacturing and shipping costs of diskettes, CD-ROMS, or other data storage media of upgraded software materials.

9. Claims 6,7,13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Kraml. (6,493,594)

As set forth above in the rejection of 35 U.S.C. 102,

With respect to claims 6 and 13, Fiske discloses a software upgrading method in accordance with claims 1 and 9, but does not disclose wherein said upgrading comprises adding new features and said validating comprises disabling the new features.

Kraml teaches wherein said upgrading comprises adding new features (See Col 5, lines 8 – 14, "As by adding a new target") and said validating comprises disabling the new features.(See Col 5, lines 41-43, "If the security record is not correct, then the system controller does not invoke the software definition file").

Kraml's method prevents an inappropriate or unauthorized system definition file from being invoked by the system controller.(See Col 2, lines 65-67) Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to disable new software upgraded features that have not been validated.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated. (See Col 1, lines 50-54)

With respect to claims 7 and 14, Fiske discloses an upgrading method in accordance with claims 6 and 13 but does not disclose further comprising activating the new features if the validating is acceptable.

Kraml discloses further comprising activating the new features if the validating is acceptable. (See Col 5, lines 40-41, "before the software definition file is invoked. If the security record is correct, then the system controller invokes the software definition file.) Kraml's method teaches that the addition of new validated features will give an appropriate or authorized system definition file to be invoked by the system.

Kraml shows wherein said upgrading comprises adding new features if the validating is acceptable in an analogous art for the purpose of invoking an appropriate system definition file. (See Col 2, lines 65-67)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to activate new upgraded features that have been validated

The motivation for doing so would have been to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated.(See Col 1, lines 50-56)
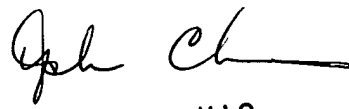
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boutcher is a very good reference that teaches a distributed computer system incorporating multiple computer processes which allows a client computer process to request execution of a remote procedure on a server computer process. Brittain is an interesting reference that discloses a method for upgrading running software processes without the loss of fault-tolerance by temporarily and dynamically increasing backup copies of a software during software upgrade. Sinnander is another good reference that discloses a method and apparatus for efficient upgrading of a software system by a plurality of versions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark P. Francis whose telephone number is (571) 272-7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JOHN CHAVIS
PATENT EXAMINER
ART UNIT 2124